IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO.4146 OF 2006
WITH
CRIMINAL APPEAL NO. OF 2007

Hindustan Lever Ltd. ..Applicant.
Vs.
The State of Maharashtra and anr. ..Respondents.

Mr.Anoop Sharma for the Appellant.

Ms. Krupa Kashid i/by S.K.Jain for the Respondent No.2.

Mr.P.A.Pol, APP. for the State.

CORAM: B.H.MARLAPALLE, J.
DATE : August 23, 2007

P.C.

1. Heard Mr.Sharma, the learned counsel for the appellant. The learned A.P.P. appears for the State and Mr.S.K.Jain appears for the Respondent No.2. Leave granted as prayed for in terms of prayer clause (a).

2. Appeal is admitted.

3. The respondents waive service.

4. By consent of the parties, appeal is taken up for hearing today as was indicated in the earlier order dated 25.7.2007.

5. The appellant is a company registered under the

Companies Act,1956 with its registered office at 165/166, Backbay Reclamation, Bombay-400 020. The appellant company is engaged in the business of manufacture and distributors of soaps, detergents, food stuffs, beverages and allied products. The said company had filed a case No.1170/S/2002 through its Accounts Assistant Shri. Kishore Dharmaraj Rele in the court of the Metropolitan Magistrate, 28th Court, Esplanade, Mumbai for the offence under Section 138 of the Negotiable Instruments Act, 1988 against the respondent No.2 i.e. M/s. Asmita Sales Agencies through its sole Proprietor Mr. Narendra Champalal Nayak.

6. As per the complaint the respondent No.2 was appointed as the Redistribution Stockist for the company products in terms of an agreement signed between the parties. During the routine course of business, the respondent No.2-accused placed an order with the company for the supply of various products as well as tea and coffee. In execution of the said order, the goods were despatched by the company to the accused through its Carrying and Forwarding Agents M/s. K.S. Enterprises, Bhopal. The accused had issued two different cheques for total amount of Rs.4,08,538.73ps. against these supplies bearing Cheque No.11183 dated 15.1.1998 for an amount Rs.2,14,334.29ps. as well as cheque No.11188 dated 15.1.1998 for an amount of Rs.1,94,204.44ps.

These payments were in discharge of existing liability for the goods supplied to the accused. When the cheques were presented for clearance with the bank, they were returned as dishonoured on 6.3.1998 with the remark payment stopped by the drawer. A statutory notice was addressed to the accused and called upon him to make the payment of Rs.4,08,538.73ps. within a period of 15 days from the receipt of the notice. The said notice was properly received to the accused on 9.3.1998 but there was no response in payment during 15 days and therefore, company filed complaint as referred to above on or about 6.5.1998. However, it came to be dismissed under Section 256 of the Cr.P.C. on 15.12.2005 i.e. after about 8-years on the ground that the complainant was absent. The certified true copy of the roznama as placed on record indicates that the complainant and/or his Advocate were remained absent on most of the dates. The roznama dated 13.9.2004 till 10.6.2005 indicate that except on 12.9.2005, the complainant was absent on all dates. Be that as it may, the fact remains that the complaint came to be dismissed under Section-256 of the Cr.P.C. and consequently the accused has been acquitted.

7. No doubt, the complaint was pending for about 8 years. On 12.9.2005, the complainant was present through its Advocate and the complaint was transferred

to the Small Causes Court as per the order passed by the Chief Metropolitan Magistrate on 1.4.2005. Thereafter, the report of service to the accused was awaited. The Roznama dated 17.8.2005 indicates that though the complainant and his advocate absent, the report was still awaited and the same was the case of 12.9.2005 when the complainant was present through his Advocate. On the very next date i.e. on 16.12.2006 the impugned order came to be passed. The approach of the Trial Court is hyper technical and it is not known whether on 15.12.2005, the trial court had received the report regarding the service of the accused. It appears that in routine and mechanical manner the impugned order has been passed by the concerned Magistrate. It is clear that the complaint was pending for 8-years. From the reasons recorded in the complaint, it is obvious that the complainant company was natural in its approach to get the complaint decided expeditiously. At the same time, the company cannot be left without any remedy available under the law and such course would result in alleged loss to the company which is a body corporate. However, at the same time the complainant can be saddled with exemptory costs for its negligence so apparently demonstrated before the Trial Court.

8. Hence, the appeal is hereby allowed and the impugned order dated 15.12.2005 is hereby quashed and set aside.

Case No.1170/S/2002 is restored to the file of the Trial Court but subject to payment of costs quantified at Rs.5000/-. Costs amount shall be deposited with the Legal Service Committee of this court within a period of 4-weeks from today.

9. Trial of the complaint is hereby expedited.

(B.H. MARLAPALLE, J.)